

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 219 of 1995

with

Civil Application No. 1962 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SAVITABEN WD/O RAVJIBHAI G PATEL

Versus

MADHUSUDAN M MEHTA & 2

Appearance:

MR AJ PATEL, Advocate for the appellant.

MR ARUN H MEHTA , Advocate for Respondent No.2.

Respondents Nos. 1 and 3 served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/08/96

ORAL JUDGEMENT

The appellant (original plaintiff) by way of this Appeal has challenged the order dated 5th April 1995 passed by the learned Judge of the City Civil Court, Ahmedabad below Review Application, Ex.28, in Civil Suit No. 1894 of 1995, whereby the learned Judge has rejected the Review application filed by the appellant.

It is the case of the appellant that the appellant's deceased husband and respondent No.1 jointly purchased the suit land admeasuring 863 square yards by a registered sale deed. After the purchase of the said land, it was divided into two equal parts and construction was carried out by both the parties having a common wall in between the two super-structures thereon after leaving a marginal space and on east side of the plot a 20 feet road for common use and convenience.

It appears that respondent No.1 has thereafter sold away his land with superstructure standing thereon to respondent No.2 who by demolishing the superstructure is putting up a scheme with an intention to erect a new building. It is the apprehension of the appellant that respondent No.2 is likely to construct a huge building and thereby to cover the marginal place and the common road of 20 feet. It is also the case of the appellant that on account of the demolition of the superstructure of respondent No.1, the common wall in between the two superstructures is likely to be damaged and the whole superstructuere of the appellant is therefore in danger.

On the aforesaid facts, the appellant has filed the aforesaid suit for permanent injunction . In the Notice of Motion taken out by the appellant, the appellant sought temporary injunction restraining the respondents from carrying out construction on the disputed suit land. The learned Chamber Judge of the City Civil Court, Ahmedabad, by his order dated 18-5-1993 rejected the Notice of Motion but directed the respondents to take care and see that the demolition and erection of new building should be made in such a way that it may not damage the property of the appellant in any way, otherwise the respondents would be held liable to compensate damages to the appellant, and that the marginal land falling within the part of the appellant is not covered or encroached upon in any manner.

It appears that instead of challenging the said order before this Court, the appellant filed a Review Application, Ex.28 , to review the aforesaid order dated 18-5-93 passed below Notice of Motion , Exs.5 and 6 by pointing out that after the aforesaid order was passed, the appellant had found out certain material documents which go to the root of the matter and as per those documents the respondents have no right to make any construction in the marginal land. The learned Chamber Judge by his order dated 27-10-92 allowed the Chamber

Summons by passing the following order :

"This chamber summons is allowed. Order passed below Notice of Motion Exs.5 and 6 on 18-5-93 is hereby set aside. The defendants are hereby restrained by temporary injunction from making any construction in the suit approach passage land admeasuring 20 feet till disposal of the suit.

ii) Considering peculiar facts, no order as to costs for this Chamber summons and Notice of Motion."

It appears that the appellant as well as respondent No.1 challenged the said order dated 27-10-92 by filing two separate appeals being Appeal From Order Nos.471 and 526 of 1993 . This Court (Coram:Y.B.Bhatt,J) was of the view that as the review application was entertained by a Judge other than the Judge who had passed the earlier order, the order dated 27-10-92 is bad and, therefore, requires to be quashed and set aside. In that view of the matter , on December 24, 1993, a direction was given to hear and decide the review application by the concerned Judge who heard Exs.5 and 6 and passed the order. In view of the said direction, the learned City Civil Judge, after hearing the learned Advocates, by his order dated 5-4-94 rejected the review application with a direction to the respondents to take care and to see that the demolition and erection of new building should not be made in such a way that it may damage the property of the appellant in any way, otherwise the respondents would be held liable to compensate the appellant, and to take care and see that the original marginal land falling within the part of the plaintiff is not covered and/or encroached upon in any manner and 20 feet road situated on the east side of the plot is neither disturbed or encroached upon by the respondents. In view of the above, the Chamber Summons was disposed off. It is against this order that the appellant has approached this Court by way of this appeal from order.

Mr. A.J.Patel, learned Advocate appearing for the appellant, has challenged the impugned order by contending that the learned Chamber Judge has committed an error in not granting the injunction as prayed for. In the submission of Mr. Patel, in view of the documents on record, the suit land was purchased jointly by the husband of the appellant as well as respondent No.1 in the year 1956 and that there was no question of the deceased Ravjibhai relinquishing his right, title and

interest over half the portion of the land appurtenant to the super structure , even though the names of the appellant as well as respondent No.2 came to be mutated in place of deceased Ravjibhai. Mr. Patel also submitted that if the injunction as prayed for is not granted, number of complications will arise and the suit itself will become infructuous.

On the other hand, Mr. A.H.Mehta, learned Advocate appearing for respondent No.2, supported the order passed by the learned Chamber Judge in its entirety.

Considering the documents to which my attention was invited , it appears that the suit land was purchased jointly and the same was divided into two equal parts and on each part equal construction was made and in between the superstructure a common wall is put up. Merely because the suit land was purchased jointly, and after the equal division thereof in two parts, can the appellant claim a right over that part of the land which is in possession of respondent No.1, by virtue of the division thereof, and on which the superstructure is put up independently by him, after so many years when there is nothing on record to show that the parties had entered into any kind of understanding in relation to the suit property ? And, in view of the fact that respondent No.1 has already demolished his portion of the superstructure and has sold away the land to respondent No.2, can the respondents be restrained from constructing a new superstructure ? The answer is in the negative. As stated above, the fact that the suit land was purchased jointly by the deceased husband of the appellant and respondent No.1 itself does not give any right to the appellant in the other part of the property belonging to respondent No.1. The fact that the appellant has allowed respondent No.1 to demolish the superstructure without raising any objection even the equity is also not in favour of the appellant when she is claiming a right with respect to the adjacent land.

Mr.Patel, learned Advocate appearing for the appellant has placed reliance on the decisions in Gurilingappa Shivappa Masali vs Sabu Ramappa Kori (1931) XXXIII Bom.L.R. 141; Vasudeo Dagadulal vs Kankoochand Hirachand AIR 1951 Bom 226 and Rami Dahyabhai Somabhai vs Rami Jagjivan Motibhai & ors (1978) XIX GLR 737 to substantiate his submission. I have gone through all these decisions. There cannot be any dispute with regard to the principles laid down in the said decisions. However, the Courts in those cases were concerned with

the rights of co-parceners qua the strangers. Therefore the principles laid down in those decisions are not applicable to the present case. Thus, considering the matter from all angles, in my opinion, no error is found to have been committed by the learned Chamber Judge in passing the impugned order and in refusing the injunction as prayed for .

Mr.A.H.Mehta, learned Advocate for respondent No12 has fairly stated that beside keeping 20 feet approach road , respondent No.2 will also keep a 20 feet open passage land and no construction will be made on this common passage. He further states that the marginal land falling within the portion of the appellant will not be covered and/or constructed and it will be kept open. Finally, Mr. Mehta has stated that the erection of the new building will be made on pillars and all precautions will be taken with a view to avoid any damage to the property of the appellant.

In view of the above, I see no reason to grant the injunction as prayed for by the appellant. There being no substance in the appeal, it is dismissed with no order as to costs.

At this stage, at the request of Mr. A.J.Patel for the appellant, the status-quo order granted by this Court shall continue for a period of six weeks from to-day. Subject to this, the status-quo order on Civil Application No. 1962/95 stands vacated and it stands disposed of accordingly.

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